

RESOLUTION NO. R-2016- 1847

RESOLUTION APPROVING ZONING APPLICATION SV/CB/CA-2016-00447
(CONTROL NO. 2013-00168)
a Class A Conditional Use
APPLICATION OF Divine Savior Lutheran Church & Academy
BY Miller Permitting and Land Development LLC, AGENT
(Divine Savior Academy)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider applications relating to zoning;

WHEREAS, the notice and public hearing requirements pursuant to Article 2 (Development Review Procedures) of the Palm Beach County Unified Land Development Code, Ordinance 2003-067 as amended (ULDC), have been satisfied;

WHEREAS, Zoning Application SV/CB/CA-2016-00447 was presented to the Board of County Commissioners at a public hearing conducted on December 7, 2016;

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the Applicant and other interested parties, the recommendations of the various County Review Agencies, and the recommendation of the Zoning Commission;

WHEREAS, the Board of County Commissioners hereby incorporates by reference the Findings in the staff report addressing the Standards contained in Article 2.B (Public Hearing Process) for a Class A Conditional Use;

WHEREAS, the Board of County Commissioners pursuant to Article 2 (Development Review Procedures) of the ULDC is authorized and empowered to consider, approve, approve with conditions or deny the request;

WHEREAS, this approval is subject to Article 2.E (Monitoring), of the ULDC and other provisions requiring that development commence in a timely manner;

WHEREAS, the issuance of this Development Permit does not in any way create any rights on the part of the Applicant and/or Property Owner to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law;

WHEREAS, the Palm Beach County Survey Section may administratively correct any scrivener's errors that will not significantly impact the overall boundary of the adopted legal description; and,

WHEREAS, Article 2.A.1.K.3.b (Action by BCC) of the ULDC requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application SV/CB/CA-2016-00447, the Application of Divine Savior Lutheran Church & Academy, by Miller Permitting and Land Development LLC, Agent, for a Class A Conditional Use to allow a Place of Worship, on a parcel of land generally described as shown on the legal description in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on December 7, 2016, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Valeche moved for the approval of the Resolution.

The motion was seconded by Commissioner Abrams and, upon being put to a vote, the vote was as follows:

- Commissioner Paulette Burdick, Mayor - Aye
- Commissioner Melissa McKinlay, Vice Mayor - Absent
- Commissioner Hal R. Valeche - Aye
- Commissioner Dave Kerner - Aye
- Commissioner Steven L. Abrams - Aye
- Commissioner Mary Lou Berger - Nay
- Commissioner Mack Bernard - Nay

The Mayor thereupon declared that the resolution was duly passed and adopted on December 7, 2016.

Filed with the Clerk of the Board of County Commissioners on December 19th, 2016.

This resolution is effective when filed with the Clerk of the Board of County Commissioners

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

BY:  COUNTY ATTORNEY



BY:  DEPUTY CLERK 

EXHIBIT A

LEGAL DESCRIPTION

TRACTS 127 AND 128 IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 42 EAST, "PALM BEACH FARMS CO. PLAT NO. 1", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2 AT PAGES 26 THROUGH 28 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LESS AND EXCEPT THE SOUTH 15.00 FEET OF SAID TRACTS 127 AND 128, AND THE EAST 35.00 FEET OF SAID TRACT 128.

ALSO LESS AND EXCEPT THAT PORTION OF SAID TRACT 128 FALLING EAST OF THE MAINTENANCE LINE AS SHOWN ON THE PALM BEACH COUNTY MAINTENANCE MAP RECORDED IN ROAD PLAT BOOK 5, AT PAGES 73 THROUGH 76 OF SAID PUBLIC RECORDS.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAIN 9.345 ACRES, MORE OR LESS.

EXHIBIT B
VICINITY SKETCH



EXHIBIT C

CONDITIONS OF APPROVAL

Conditional Use Class A Place of Worship

ALL PETITIONS

1. The approved Preliminary Site Plan October 03, 2016. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

ARCHITECTURAL REVIEW

1. At time of submittal for Final Approval by the Development Review Officer (DRO), the Architectural Elevations shall be submitted for final review and approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC). Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements. (DRO: ZONING - Zoning)

ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property Owner shall be restricted to the following phasing schedule:

a. No Building Permits for the site may be issued after December 31, 2018. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering)

2. Prior to the issuance of the first building permit, the Property Owner shall configure the property into a legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDGPMT: MONITORING - Engineering)

3. Prior to the issuance of the first Certificate of Occupancy, the Property Owner shall submit an acceptable permit application to the Land Development Division, receive a permit and remove the existing driveway connections to Lyons Road and restore the right of way, as approved by the County Engineer. (BLDGPMT/CO: MONITORING - Engineering)

4. The Property Owner shall provide to the Palm Beach County Right of Way Acquisition Section of Roadway Production Division a road right of way deed and all associated documents as required by the County Engineer for Lyons Road for a width acceptable to the County Engineer and in accordance with the County's Thoroughfare Right of Way Identification Map .

All right of way deed(s) and associated documents shall be provided and approved prior to the issuance of the first building permit or within ninety (90) days of a request by the County Engineer, whichever shall occur first. Right of way conveyance shall be along the entire frontage and shall be free and clear of all encroachments and encumbrances. Property Owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments, including a topographic survey. The Property Owner must further warrant that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney's fees as well as the actual cost of the clean up. Thoroughfare Plan Road right of way conveyances

shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include, where appropriate as determined by the County Engineer, additional right of way for Expanded Intersections and Corner Clips. The Property Owner shall not record these required deeds or related documents. Palm Beach County will prepare a tax pro-ration. A check, made payable to the Tax Collector's Office, shall be submitted by the Property Owner for the pro-rated taxes. After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (BLDGPMPT/ONGOING: LAND DEVELOPMENT - Land Development)

5. Within ninety (90) days notice by the County Engineer, the Property Owner shall provide a roadway construction easement to Palm Beach County along Lyons Road, a minimum of five(5) feet in width, or as otherwise approved by the County Engineer. This roadway construction easement shall also contain an isosceles trapezoid connecting the Corner Clips across this Property Owner s access point. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (ONGOING: MONITORING - Engineering)

6. The Property Owner shall construct:

- i. right turn lane north approach on Lyons Rd at the southern project entrance, 280 ft storage, plus 50 ft in taper, or as approved by the County Engineer.
- ii. left turn lane south approach on Lyons Rd at the northern entrance, maximum length possible given the geometric constraints, or as approved by the County Engineer.

This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the Property Owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.

Due to the planned roadway widening of Lyons Rd from the existing 2- lane to 4-lane divided within a few months of the project's opening, the Property Owner may enter into an agreement with the County to construct a temporary south approach left turn lane on Lyons Road at the main entrance before the school opening and not build the north approach right turn lane at the southern entrance on Lyons Rd, but dedicate the necessary ROW, easements, and pay all design and construction costs for the final construction of these turn lanes to the County. With this arrangement, the project will be allowed to start with a maximum total of 75 student enrollment (Daycare and/or the School) until contracts are let for widening of Lyons Road, plus an additional 30 students per year until the widening of Lyons Road to 4-lanes is completed between Clint Moore Road and Atlantic Avenue. However, at the sole discretion of the County, if it is determined that the operation of the school is creating undue traffic issues before the Lyons Road widening contracts are let, the Property Owner will be required to provide mitigation measures to the satisfaction of the County Engineer.

- a. Permits required from Palm Beach County for this construction shall be obtained prior to the issuance of the first building permit. (BLDGPMPT: MONITORING - Engineering)
- b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (BLDGPMPT/CO: MONITORING - Engineering)
- c. Alternately, the Property Owner may elect to make a payment to the County for the total cost of the southbound right turn lane (6.i. only) to be constructed as part of the Lyons Road widening project, as determined by the County Engineer, and at the time of this payment, this part of the condition will be considered as fully satisfied. (ONGOING: ENGINEERING - Engineering)

7. Prior to the issuance of the first building permit or within ninety (90) days of a request by the County Engineer, whichever shall occur first, the Property Owner shall provide to Palm Beach County Right of Way Acquisition Section of Roadway Production Division by warranty deed additional right of way for the construction of a right turn lane on Lyons Road at the project's southern, right-in-only entrance.

This right of way shall be a length as determined by the County Engineer, a minimum of twelve feet in width and a taper length of 50 feet, or as approved by the County Engineer. Additional width may be required to accommodate paved shoulders. The right of way shall

continue across the project entrance. This additional right of way shall be free of all encumbrances and encroachments and shall include Corner Clips where appropriate, as determined by the County Engineer. Property Owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments, including a topographic survey. The Property Owner must further warrant that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney's fees as well as the actual cost of the clean up. The Property Owner shall not record the required right of way or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (BLDGPMT/ONGOING: MONITORING - Engineering)

8. The Property Owner shall construct a minimum of a 6-foot wide concrete sidewalk along the west side of Lyons Road along the property's frontage. Any and all costs associated with the construction shall be paid by the Property Owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way. These improvements shall be completed concurrently with the onsite paving and grading and shall be completed prior to the issuance of the first certificate of occupancy. Alternately, the Property Owner may elect to make a payment to the County for the total cost of the sidewalk to be constructed as part of the Lyons Road widening project, as determined by the County Engineer, and at the time of this payment, this condition will be considered as fully satisfied. (BLDGPMT/CO/ONGOING: MONITORING - Engineering)

9. a. No Building Permits for the overall development generating more than 85 net AM outbound peak hour trips (172 student school+106 student daycare+11,572 sf church) shall be issued until the Property Owner makes a proportionate share payment of \$115,889.00 (the minimum payment) to widen Atlantic Ave from Florida Turnpike to Hagen Ranch Rd from 4 lanes to 6 lanes divided. Note that while this proportionate share payment is based on proportionate cost of a specific roadway improvement, the County, in its sole discretion may apply such payment to one or more mobility improvements to regionally significant transportation facilities. The proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth in Engineering Condition number 10. Any road impact fees paid by the Developer on this project prior to this proportionate share payment will be applied as a credit toward the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility in the area.

b. In the event the contract has not been let for the assured construction improvement to widen Lyons Rd from Atlantic Ave to Clint Moore Rd from a 2 lane facility to a 4-lane divided facility, no building permits for construction of the daycare or the church or both, generating more than 16 net directional peak hour trips (65 student daycare+11,572 sf church) shall be issued until the property Owner makes a Proportionate Share payment of \$48,523.00. This payment is required in addition to the minimum payment identified above. This payment is also subject to escalator calculation, as per Engineering Condition number 10.

c. In the event the contract has not been let for the assured construction improvement to widen Lyons Rd from Atlantic Ave to Clint Moore Rd from a 2 lane facility to a 4-lane divided facility, no building permits for construction of the school, generating more than 33 net outbound AM trips (82 student school) shall be issued until the property Owner makes a Proportionate Share payment of \$396,683.00. This payment is required in addition to the minimum payment identified above. This payment is also subject to escalator calculation, as per Engineering Condition number 10. (BLDGPMT/ONGOING: MONITORING - Engineering)

10. In recognition that construction prices may change over the life of the project, the proportionate share payments included in Condition 9 above shall be subject to the following escalator calculation:

Adjusted Payment (when payment is being made) = Original Payment Amount x Cost Adjustment Factor

Where,

Original Payment Amount = Proportionate Share Payment amount specified in the Proportionate Share Agreement

Cost Adjustment Factor = (Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of payment))/(Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of Prop Share Execution))

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPUIP2312301), can be found at <http://data.bls.gov/timeseries/WPUIP2312301>.

If at the time a Proportionate Share payment is due, the Commodities Code ID WPUIP2312301 is no longer used by the United States Bureau of Labor Statistics, the Adjusted Payment will be based on the Producer Price Index for non-residential commodities then in effect. In the event such an index is no longer in use, the Adjusted Payment will be based on the United States Bureau of Labor Statistics Consumer Price Index then in effect. (ONGOING: ENGINEERING - Engineering)

11. The Property Owner shall fund the cost of signal installation, if warranted, as determined by the County Engineer at the main project entrance on Lyons Road Signalization shall be a mast arm structure installation. The cost of signalization shall also include all design costs and any required utility relocation and right of way or easement acquisition.

a. No Building Permits shall be issued until the Property Owner provides acceptable surety to the Traffic Division in an amount as determined by the Director of the Traffic Division. (BLDGPM: MONITORING - Engineering)

b. In order to request release of the surety for the traffic signal at the above intersection, the Property Owner shall provide written notice to the Traffic Division stating that either the final certificate of occupancy has been issued for this development for the last phase or the school has reached maximum capacity, whichever occurs later, and requesting that a signal warrant study be conducted at the intersection. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the monies to construct the traffic signal or release the monies. In the event that the property is sold, the surety may be returned once the Traffic Division receives written documentation of the sale and a replacement surety has been provided to the Traffic Division by the new Property Owner. (ONGOING: ENGINEERING - Engineering)

12. The site may access directly to Lyons Road provided the development is limited to a 300 seat (11,572SF) place of worship, 106 child daycare and a 392 student school. Any development beyond this intensity will require a traffic study and may result in access being limited to 158th Rd S, at the determination of the County Engineer. (ONGOING: ENGINEERING - Engineering)

ENVIRONMENTAL

1. A Phase II Environmental Audit shall be submitted to the Department of Environmental Resources Management prior to Final Site Plan approval by the Development Review Officer. (DRO: ENVIRONMENTAL RESOURCES MANAGEMENT - Environmental Resources Management)

LAKE WORTH DRAINAGE DISTRICT

1. LWDD will require a 10 foot exclusive easement or warranty deed along the south side of the property for Tracts 127 and 128 to be conveyed prior to platting, issuance of permits from LWDD, or technical compliance. LWDD is working with the project representative and engineer to provide the easement to this District. PLAT: ENG LWDD (PLAT: ENGINEERING - Lake Worth Drainage District)

PLANNING

1. The 9.68 acre site shall be limited to a max of 63,268 square feet or 0.15 max FAR. (ONGOING: PLANNING - Planning)

USE LIMITATIONS

1. Prior to Final Approval by the Development Review Officer (DRO), the Property Owner shall revise the Justification Statement and Traffic Impact Study, if applicable to include the Operational Management Program for the different Facilities, including but not limited to:

- a. Hours of operation for the Place of Worship, School and Daycare;
- b. Drop-off and Pick-up time for the School and Daycare, including any staggered hours;
- c. Before and After School Hours for the School and Daycare; and,
- d. Availability of Traffic monitoring Staff. (DRO: ZONING - Zoning)

COMPLIANCE

1. In Granting this Approval, the Board of County Commissioners relied upon the oral and written representations of the Property Owner/Applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the Approval to be presented to the Board of County Commissioners for review under the Compliance Condition of this Approval. (ONGOING: ZONING - Zoning)

2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:

- a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, owner, lessee, or user of the subject property; the Revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or
- b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
- c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing Conditions of Approval; and/or
- d. Referral to Code Enforcement; and/or
- e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any Condition of Approval. (ONGOING: ZONING - Zoning)

DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.